

ARTICLE VIII. STORMWATER USER FEES

Sec. 21-_____. Intent.

The objective of this ordinance is to promote the public health, safety and general welfare of the City of Germantown, Tennessee (“city”) and its citizens in compliance with the Federal Clean Water Act, 33 U.S.C. 1251 et seq., and Tennessee Code Annotated, § 68-221-1101 et seq. which require municipalities to implement stormwater management programs within prescribed time frames to regulate storm water discharges to protect water quality; establish adequate systems of collection, conveyance, detention, treatment and release of stormwater; reduce hazards of property and life resulting from stormwater runoff; and enable municipalities to fix and require payment of fees for the privilege of discharging stormwater. The city finds that a stormwater management system which provides for the treatment of stormwater is of benefit and provides services to all property within the city.

It is further determined and declared that charges shall be established for each parcel of real property located within the municipal limits of the city as provided hereinafter to provide for dedicated funding sources for the administration of stormwater management programs and/or stormwater system of the city. The proceeds of charges so derived shall be used for the purposes of planning, operation, maintenance, repair, replacement and debt service of the city’s stormwater management programs and system.

Section _____. Definitions.

For the purpose of this ordinance, the following definitions shall apply: words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word “shall” is mandatory and not discretionary. The word “may” is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster’s Dictionary.

(1) “Best management practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of stormwater runoff. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

(2) “City Administrator” means the City Administrator for the City of Germantown or his/her designee.

(3) “Construction” means the erection, building, acquisition, alteration, reconstruction, improvement or extension of stormwater facilities; preliminary planning to determine the economic and engineering feasibility of stormwater facilities; the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of stormwater facilities; and the inspection and supervision of the construction of stormwater facilities;

(4) “Developed Property” means real property which has been altered from its natural state by the creation or addition of buildings, structures, pavement or other impervious surfaces, or by the alteration of the property that results in a meaningful change in the hydrology of the property during and following rainfall events.

(5) “Equivalent Residential Unit (ERU)” shall be used as the basis for determining stormwater service charges to all properties within the City. An ERU is the standard value for which non-residential properties are compared to the average residential property. One ERU is based upon the average residential property area of .34 acres with a runoff coefficient of .4 and is equal to \$3.25.

(6) “Exempt property” means public right-of-ways, including public streets, alleys, sidewalks, and public drainage facilities; privately owned residential streets; and property that does not discharge stormwater runoff in the stormwater or flood control facilities of the city.

(7) “Fee” or “Stormwater user’s fee” means the charge established under this ordinance and levied on owners of parcels or pieces of real property to fund the costs of stormwater management and of operating, maintaining, and improving the stormwater system in the municipality. The stormwater user’s fee is in addition to any other fee that the municipality has the right to charge under any other rule or regulation of the municipality.

(8) “Fiscal year” means July 1 of a calendar year to June 30 of the next calendar year, both inclusive.

(9) “Impervious surface” means a surface which is compacted or covered with material that is resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, roof extensions, sidewalks, patios, driveways, parking lots, and any other oiled, graveled, graded, or compacted surface, or any other surface which impedes the natural infiltration of surface water. Such term includes buildings.

(10) “Manager” means the City of Germantown City Engineer or his/her designee who is designated to supervise the operation of the stormwater management programs and system.

(11) “Multi-family Residential Property” means (i) a condominium for residential use; and/or; (ii) a residential structure located on a single parcel that is designed with two to four dwelling units which accommodate two or more families or groups of individuals living separately and not sharing the same living space.

(12) “Other Developed Property” means all Developed Property located within the municipal limits of the city other than (i) Residential Property; (ii) Exempt Property; (iii) Vacant Property and (iv) Parkland/Cemetery/Golf Course. Other Developed Property shall include commercial properties, industrial properties, apartments, parking lots, hospitals, schools, recreational and cultural facilities, hotels, offices, churches, federal, state and local government properties and multi-use properties.

(13) “Parkland” means all real property owned by federal, state and/or local governments that has been designated by such governmental entity for use as a public park.

(14) “Person” means any and all persons, natural or artificial, including any individual, firm or association, and any municipal or private corporation organized or existing under the laws of this or any other state or country.

(15) “Property Owner” means the property owner of record as listed in the county’s assessment roll. A property owner includes any individual, corporation, firm, partnership, or group of individuals acting as a unit, and any trustee, receiver, or personal representative.

(16) “Residential Property” means Single-family Residential Property and Multi-family Residential Property.

(17) “Runoff Coefficient” is a term used to describe the percentage of precipitation that leaves a particular site as runoff. Runoff is precipitation that does not soak or absorb into the soil surface and is greatly impacted by the amount of impervious surface that exists on a particular site. The Runoff Coefficient relates the amount of impervious surface to the intensity of development.

(18) “Single-family Residential Property” means a detached residential structure designed as a single dwelling unit to accommodate one family or group of individuals living together and sharing the same living space, but excluding multi-class (i.e. commercial, residential, industrial, institutional, etc.) properties which include single-family residential uses.

(19) “Stormwater” means stormwater runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration, and drainage.

(20) “Stormwater management fund” or “fund” means the fund created by this ordinance to operate, maintain, and improve the city’s stormwater management system.

(21) “Stormwater management” means the planning, design, construction, regulation, improvement, repair, maintenance, and operation of facilities and programs relating to water, flood plains, flood control, grading, erosion, tree conservation, and sediment control.

(22) “Stormwater system” or “system” means all stormwater facilities, stormwater drainage systems and flood protection systems of the city and all improvements thereto which operate to, among other things, control discharges and flows necessitated by rainfall events; and incorporate methods to collect, convey, store, absorb, inhibit, treat, prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

(23) “Surface water” includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other water courses, lakes and reservoirs.

(24) “User” shall mean the owner of record of property subject to the stormwater user fee imposed by this ordinance.

(25) “Vacant Property” shall mean real property that has been altered from its natural state but has no impervious surface.

Section ____ . Funding of stormwater management system.

Funding for the stormwater management fund may include, but not be limited to, the following:

- (1) Stormwater user fees.
- (2) Civil penalties and damage assessments imposed for or arising from the violation of the city’s stormwater management ordinance.
- (3) Stormwater permit and inspection fees.
- (4) Other funds or income obtained from federal, state, local, and private grants, or revolving funds, and from the Local Government Public Obligations Act of 1986 (Tennessee Code Annotated, title 9, chapter 21) or any similar statute.

To the extent that the stormwater user fees collected are insufficient to construct needed stormwater drainage facilities, the cost of same may be paid from such city funds as may be determined by the Board of Mayor and Aldermen.

Section ____ . Stormwater Fund.

All revenues generated by or on behalf of the stormwater management programs and/or system shall be deposited in a stormwater management fund and used exclusively for stormwater management and the city's stormwater system.

Section ____ . Operating Budget.

The municipality's governing body shall adopt an operating budget for the stormwater management fund each fiscal year prior to the beginning of such fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for planning, operations and maintenance, extension and replacement and debt service, if any.

Section ____ . Stormwater User's Fees Established.

There shall be imposed on all Developed Property within the municipal limits of the city, except Exempt Property, a stormwater user fee. The stormwater user fee shall be a monthly or regular interval charge and shall be determined by the provisions of this article and shall be established and changed from time to time by ordinance by the Board of Mayor and Aldermen. The fee shall be reasonable and equitable so that users pay a proportionate share of the costs of the storm water and/or flood control facilities and/or programs of the city. Prior to establishing or amending stormwater user fees, the city shall advertise its intent to do so by publishing notice in a newspaper of general circulation in the city at least thirty (30) days in advance of the meeting or meetings of the board of mayor and aldermen which shall consider the adoption of the fee or its amendment.

Section ____ . Property classification for stormwater user's fee.

For purposes of determining the stormwater user fee, all properties in the city are classified into one of the following classes:

- (a) Other Developed Property;
- (b) Residential Property;
- (c) Parkland/Cemetery/Golf Course;
- (d) Vacant Property; and
- (e) Exempt Property.

Section ____ . User Fee Determination.

The city will use a gross property area and intensity of development methodology to assess stormwater user fees to property owners. The fee will be based on the amount of runoff each property contributes to the city's stormwater runoff as determined by an average runoff coefficient for that property. The City Administrator or his/her designee is hereby authorized to develop policies and procedures in accordance with this ordinance for the implementation and calculation of stormwater user fees. Runoff Coefficients shall be as follows:

Land Use	Runoff Coefficient
Residential	0.4
Other Developed Property	0.9
Parkland/Cemetery/Golf Course	0.25
Vacant Property	0.2

Source: American Society of civil Engineers

(I) Stormwater User's Fee for Residential Property.

The city's governing body finds that the intensity of development of most parcels of real property in the municipality classified as residential is similar and that it would be excessively and unnecessarily expensive to determine precisely the square footage of each such parcel. Therefore, all residential properties shall be charged a stormwater user fee in accordance with the three tiers as follows:

<u>Gross Area Square Footage</u>		<u>Stormwater User Fee</u>
0 to 10,000	SF	\$3.00 per month
10,001 to 22,000	SF	\$3.25 per month
More than 22,000	SF	\$3.50 per month

(II) Stormwater User's Fee for Other Property.

The monthly stormwater user fee for Other Developed Property; Vacant Property and Parkland/Cemetery/Golf Course (herein "Other Property") shall be calculated using the formula herein which applies a Runoff Coefficient (based on the classification of the real property as set forth below) to the gross area square footage of the parcel and the ERU.

$$\text{Monthly Stormwater Fee} = \frac{A_{OT}}{A_R} \times \frac{R_{OT}}{R_R} \times \text{ERU}_{\text{Rate}} \times \text{QF}$$

Where:	A_{OT}	=	Other Property Area (measured in acres)
	R_{OT}	=	Applicable Other Property Runoff Coefficient
	A_R	=	Average Residential Property Area (acres) = 0.34 acres
	R_R	=	Average Residential Runoff Coefficient (C) = 0.4
	ERU_{Rate}	=	Equivalent Residential Unit = \$3.25/month
	QF	=	Quality Factor = 1.0

Runoff Coefficient:

Other Developed Property	.90
Residential	.40
Parkland/Cemetery/Golf Course	.25
Vacant Property	.20

(III) Stormwater User's Fee for Exempt Property.

There shall be no stormwater user fee for Exempt Property.

Section __. Base Rate.

The board of mayor and aldermen shall by ordinance establish the rates related to the stormwater user fee for all real property. The rates shall be calculated to insure adequate revenues to fund the costs of stormwater management and to provide for the operation, maintenance, and capital improvements of the stormwater system of the city, and related debt service, and may be amended from time to time as determined by the municipality's governing body.

Section __. Credits to stormwater user fees.

A credit to the stormwater user fee may be granted by the manager for any Other Developed Property; Vacant Property; and/or Parkland/Cemeteries/Golf Courses for which (i) properly designed, constructed and maintained facilities which retain and control the quantity and/or improve the quality of stormwater runoff for that property have been completed after final adoption of this ordinance; (ii) public or private schools demonstrate implementation of programs to educate students which will reduce the quantity or improve the quality of stormwater runoff; and/or (iii) owners demonstrate implementation of other non-structural BMPs in accordance with the criteria developed by the manager which will reduce the quantity or improve the quality of stormwater runoff for that property. The City Administrator or his/her designee is hereby authorized to develop a credit manual to be approved by the Board of Mayor and Aldermen which shall set forth procedures for the application of such credits to the fees and standards to be applied in consideration of whether to grant such credit to the stormwater user fee. Upon proper application by any user in accordance with such established procedures, the manager shall make a determination regarding any adjustment of such stormwater user's fee and shall notify the user, in writing, of his/her decision.

Section __. Appeals of fees.

(1) Fee Calculation. Any person who disagrees with the initial or any subsequent calculation of the stormwater user's fee for such property (exclusive of disagreement as to whether there should be a credit of the fee pursuant to Section __ hereof) may appeal such determination and calculation to the manager. Such appeal shall be filed in writing in accordance with the City's policies and procedures within One Hundred Eighty (180) days after the initial billing of the stormwater user fee for that property or within One Hundred Eighty (180) days after any billing showing a recalculation of the stormwater user fee for that property; and shall state the specific grounds for the appeal and provide supporting data. The manager shall make a determination within ninety (90) days of receipt of the user's written appeal and shall notify the user, in writing, of his/her decision.

Any person who disagrees with the determination of the manager regarding the calculation of the stormwater user fee may appeal such determination to the City's local hearing board for stormwater matters within thirty (30) days from the date of receipt of the manager's written determination. Any such appeal shall be filed in writing in accordance with the requirements of the local hearing board for such appeals. The local hearing board shall make a final determination within ninety (90) days of receipt of the user's written appeal and shall notify the user, in writing of its decision.

For an appeal beginning within One Hundred Eighty (180) days of the initial billing for a property, any adjustment resulting from such appeal shall be retroactive to the date of the initial billing. For an appeal beginning within One Hundred Eighty (180) days of a billing showing a recalculation of the stormwater fee, any adjustment resulting from such appeal shall be retroactive to the date the recalculated bill went into effect. All stormwater user fees are due and payable as billed by the City during the appeal process. Any amounts owed to a user as a result of a retroactive fee adjustment shall be paid by the City to the user either by issuance of a credit to said user's account or by issuance of a check from the City.

(2) Fee Credit. Any person who disagrees with the determination by the manager of a stormwater user fee credit as set forth in Section ___ herein may appeal such determination to the City's local hearing board for stormwater matters within thirty (30) days from the date of receipt of the manager's written determination. Any such appeal shall be filed in writing in accordance with the requirements of the local hearing board for such appeals. The local hearing board shall make a final determination within 90 days of receipt of the user's written appeal and shall notify the user, in writing of its decision.

Any credit resulting from an appeal shall be retroactive to the date of the billing that next preceded the date of the proper application for the fee credit by the user. All stormwater user fees are due and payable as billed by the City during the appeal process. Any amounts owed to a user as a result of a retroactive fee adjustment shall be paid by the City to the user either by issuance of a credit to said user's account or by issuance of a check from the City.

Section __. Property owners to pay charges.

The owner of each lot or parcel shall pay the stormwater user fees and charges as provided in this ordinance.

Section __. Billing procedures and penalties for late payment.

(1) Utility User/Owner. The stormwater user fee for an owner of property who is utilizing the city's utilities with respect to the subject property shall be billed and collected monthly with the utility services bill for that property. The city may discontinue utility service to any such owner/user who fails or refuses to pay the stormwater user fee and may refuse to accept payment of the utility bill from any owner/user without receiving, at the same time, payment of the stormwater user fee charges owed by such owner/user, and may refuse to reestablish service

until all such fees have been paid in full. The stormwater user fee for the utility user/owner shall be subject to the same fees as are applicable to delinquent payments for city utilities.

(2) Other Owners. The stormwater user fee for an owner of property who does not utilize the city's utilities with respect to the subject property shall be billed and collected separately on a monthly or other periodic basis.

(3) Delinquent bills. The stormwater user fee shall be paid on or before the due date shown on the bill. Failure to receive a bill will not release a user from payment obligations, nor extend the due date. In addition to any other rights regarding collection of such fees, the city may note any delinquency in payment of the stormwater user fee on the city's real estate tax records and said fee may be collected with real estate taxes due upon the subject property and shall bear the same penalties and interest as may apply for delinquent real estate taxes on said real property. The city shall be entitled to recover attorney's fees incurred in collecting delinquent stormwater user bills. Any charge due under this ordinance which shall not be paid may be recovered at law by the municipality.

(4) Mandatory statement. Pursuant to Tennessee Code Annotated § 68-221-1112, each bill that shall contain stormwater user's fees shall contain the following statement in bold:

THIS TAX HAS BEEN MANDATED BY CONGRESS.